



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 23, 1996

Mr. Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR96-1529

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40474.

The Texas Department of Transportation (the "department") received an open records request for, among other things, "all records not received in the previous request for records pertaining to case # 96 A A C018."¹ You have submitted to this office as responsive to the request two legal memoranda, one page of typed notes responding to one of those memoranda, and an "Internal Review Coordination Form," each of which you contend are excepted from required public disclosure, at least in part, by section 552.107(1) of the Government Code.

Section 552.107(1) protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." See Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the

¹For purposes of this ruling, we assume that the records at issue did not come within the ambit of a previous written request to the department made under the Open Records Act. See Gov't Code § 552.302.

attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege.

After reviewing these four documents, we conclude that the two legal memoranda may be withheld in their entirety pursuant to section 552.107(1), as these two documents consist solely of an attorney's legal advice and opinion. Similarly, to the extent that the typewritten notes reflect the legal advice or opinion of an attorney, that document may also be withheld in its entirety under the attorney-client privilege. Finally, we agree that the portion of the "Internal Review Coordination Form" that you have highlighted in yellow constitutes legal opinion and thus may be withheld from public disclosure.

You also contend that the department may withhold pursuant to section 552.111 of the Government Code the entire draft of a "Report of Investigation" that was later released in a revised form. In Open Records Decision 559 (1990), this office concluded that a preliminary draft of a document that is intended for release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such could be withheld pursuant to the statutory predecessor to section 552.111. However, subsequent to issuance of Open Records Decision No. 559 (1990), this office determined that section 552.111 excepts only advice, opinion, or recommendation intended for use in a governmental entity's policymaking processes.

[T]o come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

Open Records Decision No. 615 (1993) at 5. Consequently, in the wake of Open Records Decision No. 615 (1993), section 552.111 now excepts draft documents that have been released to the public only to the extent that the draft documents pertain to the policymaking function of the governmental body.

The draft document at issue does not reflect the *formulation* of agency policy or otherwise directly relate to the policy mission of the department, but rather pertains solely to a personnel matter as to whether an existing policy was followed by a department employee. We therefore conclude that none of the information in the draft report may be excepted under section 552.111. This record must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Loretta R. DeHay". The signature is written in a cursive, flowing style.

Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 40474

Enclosures: Submitted documents

cc: Mr. Richard G. Sanders
11814 Rim Rock Trail
Austin, Texas 78737
(w/o enclosures)